

Happy Holidays!

As many of you know, nearly nine years ago I co-wrote the Trustee's Legal Companion (see to the right). Shameless plug time: the fifth edition is coming out in March 2019. It's a bit of work to update every couple of years, but it's important to make sure the book is up to date with tax laws and new estate planning strategies. And, at less than \$30, it's a great stocking stuffer for new or prospective successor trustees!

My other big project this year has been to scan my clients' files, and there are a LOT! Actually, I haven't been doing the scanning – I have had a very nice young assistant stand over the copier for hours – but I have used this as an opportunity to look through some of the work I've done on my own over the past 16 years. What I have found is that as time has passed, many clients haven't taken a recent look at their estate plans despite changed circumstances and new laws. I highly urge you to spend a little time this holiday season to look at your Will, Trust, Advance Health Care Directive, and other estate planning documents and make sure they still work for you.

For instance:

- Did you create your estate plan when your children were teens, and did you name your trusted sibling to act as successor trustee upon your death or incapacity? If it's been more than 10 years, it may be time to consider naming one of your children to serve.

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- Did you name a friend or relative to act as your medical agent in your Advance Health Care Directive, and then notice that they aren't that good at handling doctors or hanging out in hospitals? If so, let's think of someone else who can be your advocate for medical decisions.
- Do you have a net worth of less than \$8 million and a long-term marriage? If so, read through your trust carefully to see if it has A/B Trust provisions (you'll see the words "Bypass Trust" and "Survivor's Trust"). Due to significant changes in the estate tax law, your trust may be more complicated than it needs to be. Let's have a brief conversation to go over your options to minimize legal work at each spouse's death.
- Have you refinanced or purchased new property since you created your trust? It is very important for all of your significant assets to be titled in the trust. Please review your property tax bill and make sure that you, as trustee, are listed as the owner. While you're at it, check your brokerage accounts and ensure they are titled correctly as well.

Estate and Gift Taxes

For those of you keeping track, next year the estate tax exemption is \$11.4 million per person, which means a married couple can transfer \$22.8 million to family members without the imposition of the estate tax. A person can also gift \$15,000 to as many people as he wants each year without the need to file a gift tax return.

New Laws and Cases

As always, I've reviewed the recent cases and laws for this newsletter, but there really isn't anything exciting in the world of trusts and estates besides these tiny nuggets:

- If you're transferring your real estate into a trust, the recording fee has increased by \$75, unless the transfer is of your personal residence;
- The law presumes a joint tenancy account goes to the surviving joint tenant, even if one of the joint tenants has a living trust. The beneficiaries of the trust would need to provide "clear and convincing evidence" to show that the decedent intended the property to go to the trust beneficiaries and not the surviving joint tenant (a very difficult task);
- An Advance Health Care Directive is used to admit someone to a care facility for the elderly (and not a financial Power of Attorney);
- If you get a marriage license and you, your spouse, and the officiant sign the marriage license, the marriage is valid, even if the license isn't sent back to the county recorder; and
- DNA evidence can be used to prove paternity to figure out a decedent's heirs, but only if the DNA was obtained during the decedent's lifetime.

Spoiler Alert!

If you are a TV binge watcher like me, you probably spent the last week gorging on *Marvelous Mrs. Maisel* (sorry Netflix clients!), which is a delightful look at Upper West Side Manhattan in the late 1950s. But, unlike me, you probably didn't spot the gift tax issue late in the second season. (Don't read any farther if you're planning on catching up over Christmas break.)

Without giving out any names or contexts, one person gives another person \$60,000 in 1959! Although inflation tables show that the gift would be worth over \$500,000 today, that understates the buying power of the gift. In 1959, the average cost of a house was \$10,000, the average annual salary was \$5,000, and the cost of gas was 25¢/gallon. So, that recipient got a ticket to a new life (or perhaps a ticket to a six-month world tour?).

There would be a significant gift tax applied to the transfer, because the lifetime exemption for gifts was only \$30,000 (in 2019 it's \$11.4 million), and the tax rate was over 50%. The giver would have had to pony up around \$10,000 (the cost of a house!) to make this gift. However, the giver would have been a part of a large crowd: In 1959 over 85,000 people filed gift tax returns, netting the IRS over \$117 million. Whereas, in 2006 only 25,000 people filed gift tax returns, but the IRS received \$1.9 billion. [Credit: "The Federal Gift Tax: History, Law and Economics", David Joulfaian, US Department of the Treasury, Nov. 2007.]

I know it's not reasonable to expect fictional TV to be realistic. Litigators can't stand courtroom scenes and doctors cringe at hospital shows, but I think it's fun to find estate/gift/probate issue in fiction. And, to those of you with contacts to the Palladinos', please let them know I'd be happy to do an on-set consultation for Season 3. And, unlike Midge, I'll just need a carry-on.

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I am so thankful to all of you for your business and your referrals. It's been a busy year! It's hard to believe I started my solo practice childless and now my son is a freshman in high school! It's challenging to manage my children's schedules and a full workload. As Michelle Obama said last week regarding work-life balance: "that s**t doesn't work all the time." But my husband and I seem to manage, and the kids keep getting bigger, with the help of a lot of take-out.

I've had some clients come up to me this year to say "hi" at parties, the supermarket, and my kids' schools and I'm embarrassed to admit that with my self-diagnosed face blindness, I've drawn a blank on names and relationships. Rest assured: your estate

plans are at my fingertips and in my office you have my full attention. Outside of work, please don't hesitate to say "hi" and give me a little bit of a refresher. I genuinely love being a part of the Los Gatos community and seeing my clients around town.



This Newsletter is for information and discussion purposes only. Before any action is taken, professional advice, based on your specific situation, should be obtained.

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